

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PAUL CLARK,

**Plaintiff,**

V.

GOLDEN SPECIALTY, INC., AND  
SCOTT SWIGGARD.

### Defendants.

C14-1412 TSZ

## ORDER

THIS MATTER comes before the Court on plaintiff's motion for attorney's fees, docket no. 147. Having reviewed the motion and related filings, the Court enters the following Order.

## Background

Plaintiff filed this action against his former employers, Golden Specialty, Inc. (“Golden Specialty”) and Scott Swiggard, alleging claims for unpaid overtime wages under the Fair Labor Standards Act (“FLSA”) and Washington Minimum Wage Act (“MWA”), for retaliatory discharge under the FLSA, for breach of contract, for tortious interference with contractual relations and with business expectancies, for defamation, and for wrongful discharge in violation of public policy. *See* Second Amended Complaint, docket no. 53. On September 27, 2016, the Court dismissed plaintiff’s claim

1 for tortious interference with business expectancies on summary judgment. *See* Minute  
2 Order, docket no. 92. On October 29, 2016, the Saturday before trial, plaintiff moved to  
3 dismiss all of his remaining claims but two: retaliatory discharge under the FLSA and  
4 wrongful discharge in violation of public policy. Motion to Dismiss, docket no. 119. On  
5 the first morning of trial, October 31, 2016, the Court granted plaintiff's motion for  
6 voluntary dismissal. *See* Minute Entry, docket no. 125. On November 7, 2016, the jury  
7 returned its verdict, docket no. 136, finding in favor of defendants on plaintiff's claim for  
8 wrongful discharge in violation of public policy, but in favor of plaintiff on his claim for  
9 FLSA retaliation. The jury awarded plaintiff \$108,100 in lost wages and \$3,335 for  
10 emotional distress, and assessed punitive damage awards of \$60,000 against Golden  
11 Specialty and \$15,000 against Scott Swiggard. Plaintiff now moves for attorney's fees  
12 pursuant to 29 U.S.C. § 216(b).

13 **Discussion**

14 The FLSA authorizes an award of reasonable attorney's fees to a prevailing  
15 plaintiff in anti-retaliation suits. *Avila v. Los Angeles Police Dept.*, 758 F.3d 1096, 1104  
16 (9th Cir. 2014) (citing 29 U.S.C. § 216(b)). Plaintiff seeks \$51,360.00 in fees for 85.6  
17 hours of time billed by Thad Guyer at a rate of \$600 per hour, and \$89,257.50 in fees for  
18 198.35 hours of time billed by Stephani Ayers at a rate of \$450.<sup>1</sup> *See* Second  
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21 <sup>1</sup> There appears to have been a mathematical error in plaintiff's calculation of his attorney's fees, though  
22 the source of that error is unclear. Plaintiff's spreadsheet calculates a fee total of \$140,237.80. *See*  
23 Second Supplemental Decl. of Stephanie Ayers, Ex. A-2, docket no. 164-1 at 14. But when the number  
of "Hours Claimed" by Mr. Guyer (85.6) and Ms. Ayers (198.35) are multiplied by their respective hourly  
rates, the total fees for both attorneys are \$140,617.50. The Court presumes that the raw data provided by  
Mr. Guyer and Ms. Ayers is correct. Accordingly, the Court calculates plaintiff's requested fees based on

1 Supplemental Decl. of Stephani Ayers, docket no. 164 at ¶ 3 & Ex. A-2, docket no. 164-1  
 2 at 13-14. In total, plaintiff's motion seeks \$140,617.50 in attorney's fees.<sup>2</sup> Defendants  
 3 do not contest plaintiff's entitlement to attorney's fees. They challenge only the  
 4 reasonableness of the fees claimed.

5 The first step in determining the amount of a reasonable fee is to calculate the  
 6 lodestar figure by taking the number of hours reasonably expended on the litigation and  
 7 multiplying it by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433-34  
 8 (1983). Although in most cases the lodestar figure is presumptively a reasonable fee  
 9 award, the district court may, if circumstances warrant, adjust the lodestar to account for  
 10 other facts which are not subsumed within it," including the complexity of the issues, the  
 11 skill required, and the results obtained. *See Camacho v. Bridgeport Financial*, 523 F.3d  
 12 973, 978 (9th Cir. 2008).

13 **A. Reasonable Hourly Rate**

14 Reasonable attorney's fees "are to be calculated according to the prevailing market  
 15 rates in the relevant community." *See Van Skike v. Director, Office of Workers'*  
 16 *Compensation Programs*, 557 F.3d 1041, 1046 (9th Cir. 2009) (quoting *Blum v. Stenson*,  
 17 465 U.S. 886, 895 (1984)). "Generally, when determining a reasonable hourly rate, the  
 18 relevant community is the forum in which the district court sits." *Camacho v. Bridgeport*  
 19 *Financial, Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). "[T]he burden is on the fee applicant

20  
 21 the number of "Hours Claimed" by each attorney multiplied by their requested hourly rate, rather than use  
 22 the total figures provided by counsel which appear to have been calculated improperly.

22 <sup>2</sup> Plaintiff has made certain reductions to the hours expended in an attempt to reflect the amount of work  
 23 that went towards the FLSA retaliation claim that was ultimately successful. *See* Decl. of Stephani Ayers,  
 docket no. 146 at ¶ 11.

1 to produce satisfactory evidence . . . that the requested rates are in line with those  
2 prevailing in the community for similar services by lawyers of reasonably comparable  
3 skill, experience and reputation.” *Id.* at 980 (quoting *Blum*, 465 U.S. at 895 n. 11). Rate  
4 determinations in other similar cases and affidavits of the plaintiff’s attorneys and other  
5 attorneys regarding prevailing fees in the community “are satisfactory evidence of the  
6 prevailing market rate.” *Id.* (quoting *United Steelworkers of Am. v. Phelps Dodge Corp.*,  
7 896 F.2d 403, 407 (9th Cir. 1990)).

8       **1. Attorney Guyer**

9           Mr. Guyer has 38 years of civil rights and criminal trial experience and has  
10 practiced both nationally and internationally. Guyer Decl., docket no. 145 at ¶ 1. Mr.  
11 Guyer requests an hourly rate of \$600. In support of this hourly rate, plaintiff submits  
12 declarations from Jack Sheridan and Gregory Wolk, Seattle area employment attorneys  
13 who opine that Mr. Guyer would command an hourly rate between \$500 and \$600 an  
14 hour in light of his significant experience. Decl. of Thad Guyer, docket no. 145, Exs. 1 &  
15 2.

16           Defendants assert that Mr. Guyer’s requested hourly rate is unreasonable in this  
17 district and that a reasonable rate for Mr. Guyer would be \$450 per hour. Defendants do  
18 not offer any declarations regarding the prevailing rate in this judicial district. Instead,  
19 defendants contend, with citation to several cases,<sup>3</sup> that attorneys “in the Western District

20 \_\_\_\_\_  
21 <sup>3</sup> Only one of the cases defendants cite was decided in the last two years and that case involved an  
attorney with only ten years of practice experience. See *Fulton v. Livingston Fin. LLC*, No. C15-0574  
22 JLR, 2016 WL 3976558, at \* 4 (W.D. Wash. July 25, 2016). Accordingly, these cases are poor  
comparators and provide very limited support for the conclusion that the Court should reduce Mr. Guyer’s  
23 hourly rate below the range identified in the declarations of Mr. Sheridan and Mr. Wolk. See *Charlebois*

1 pursuing consumer and employment claims are rarely compensated for hourly rates in  
2 excess of \$450 for attorneys of Mr. Guyer's vintage." Defs.' Opposition, docket no. 155  
3 at 7. It is not the case, however, that Courts in this district have refused to approve rates  
4 above \$450. *See, e.g., Conti v. Corporate Services Group, Inc.*, 30 F. Supp. 3d 1051,  
5 1080 (W.D. Wash. Jul. 10, 2014) (noting, in 2014, that \$500 is "near the upper end of the  
6 range of rates that experienced employment counsel charge in this District"); *Lauer v.*  
7 *Longevity Medical Clinic PLLC*, 2016 WL 2595122, at \*3 (W.D. Wash. May 4, 2016)  
8 (finding a \$500 hourly rate reasonable in light of lead counsel's experience in  
9 employment cases). None of the cases defendants cite involved an attorney with Mr.  
10 Guyer's level of trial experience. Mr. Guyer was an exemplary advocate who provided  
11 remarkably high quality representation and achieved a well-fought victory for his client.  
12 Plaintiff has met his evidentiary burden by producing satisfactory evidence that an hourly  
13 rate between \$500 and \$600 for Mr. Guyer is commensurate with lawyers of reasonably  
14 comparable skill, experience, and reputation in the community. This range of rates is in  
15 line with the Court's own knowledge and experience regarding fees charged in this  
16 district by similarly skillful litigators with more than 35 years of experience. Defendants  
17 have produced no evidence, other than citation to a few cases which offer poor  
18 comparisons for Mr. Guyer's work, to rebut the accuracy or reasonableness of the hours  
19 charged or the facts asserted in the declarations submitted by the plaintiff. *See Gates v.*

20  
21 *v. Angels Baseball LP*, 993 F. Supp. 2d 1109, 1121 (C.D. Cal. 2012) ("While past fee rates may be useful  
22 evidence to show a floor below which a court's fee calculations should not drop, past fee rates in no way  
23 support the conclusion that a court should reduce the fees in the present case to the rates awarded in the  
past.").

1     *Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992) (“The party opposing the fee  
2 application has a burden of rebuttal that requires submission of evidence to the district  
3 court challenging the accuracy and reasonableness of the hours charged or the facts  
4 asserted by the prevailing party in its submitted affidavits.” (citing *Blum*, 465 U.S. at 892  
5 n. 5)). Given the breadth of Mr. Guyer’s experience, the high quality representation he  
6 provided, and the dearth of relevant evidence submitted by the defendants in support of  
7 their contention that an hourly rate between \$500 and \$600 for Mr. Guyer is excessive,  
8 the Court concludes that an hourly rate of \$550 is reasonable. Mr. Guyer was worth  
9 every penny.

10           **2. Attorney Ayers**

11           Ms. Ayers was second chair at trial and has approximately 13 years of  
12 employment litigation experience. *See* Decl. of Stephani Ayers, docket no. 146 at ¶ 5.  
13 Ms. Ayers requests an hourly rate of \$450. In support of this hourly rate, plaintiff relies  
14 on the declarations of Mr. Sheridan and Mr. Wolk who opine that Ms. Ayers would  
15 command an hourly rate between \$300 and \$500 an hour. Decl. of Thad Guyer, docket  
16 no. 145, Ex. 1 at ¶ 8 & Ex. 2 at ¶ 8-9. Defendants argue that Ms. Ayers’s requested  
17 hourly rate of \$450 is excessive for an attorney of her vintage and that a reasonable rate  
18 for Ms. Ayers would be \$300 per hour. Having reviewed recent fee awards in this  
19 district, the Court concludes that an hourly rate of \$350 for Ms. Ayers is commensurate  
20 with lawyers of reasonably comparable skill, experience, and reputation in the  
21 community. *See, e.g., Fulton*, 2016 WL 3976558 at \* 4 (Reasonable rate for attorney in  
22 an FDCPA action with approximately ten years of experience was \$300); *BWP Media*

1    *USA Inc. v. Rich Kids Clothing Co., LLC*, 103 F. Supp. 3d 1242, 1250 (W.D. Wash. May  
2    1, 2015) (\$350 an hour was a reasonable rate for an attorney with nineteen years of  
3    experience in infringement action); *Hanson v. County of Kitsap, Wash.*, No. 13-5388  
4    RJB, 2015 WL 3965829, at \*4 (W.D. Wash. June 30, 2015) (approving a \$400 hourly  
5    rate for an attorney with over 20 years of experience and a \$350 hourly rate for the two  
6    other attorneys with less experience who worked on the case). This billing rate is in line  
7    with the Court’s knowledge and experience regarding the fees charged in this district by  
8    attorneys with Ms. Ayers’s background.

9                  **B. Hours Reasonably Expended**

10                 “By and large, the court should defer to the winning lawyer’s professional  
11                 judgment as to how much time he was required to spend on the case; after all, he won,  
12                 and might not have, had he been more of a slacker.” *Moreno v. City of Sacramento*, 534  
13                 F.3d 1106, 1112 (9th Cir. 2008). In determining the appropriate number of hours to be  
14                 included in the lodestar calculation, a district court should, however, exclude hours “that  
15                 are excessive, redundant, or otherwise unnecessary.” *McCown v. City of Fontana*, 565  
16                 F.3d 1097, 1102 (9th Cir. 2008). Plaintiff requests fees for 85.6 hours expended by  
17                 Mr. Guyer and 198.35 hours expended by Ms. Ayers.

18                 Defendants make two specific objections to the hours expended by plaintiff’s  
19                 attorneys. Defendants first argue that the Court should not award fees for the 9.05 hours  
20                 expended prior to the filing of plaintiff’s complaint because the time entries for this work  
21                 are too nonspecific to determine whether they were related to the sole claim on which  
22                 plaintiff prevailed. The majority of these hours, however, are claimed in a time entry that

1 contains a description of work clearly indicating that the hours were related to plaintiff's  
2 FLSA retaliation claim. *See* Supplemental Decl. of Stephani Ayers, Ex. A, docket no.  
3 148-1 at 2 (recording 7.5 hours for "Research FLSA case law, FLSA retaliation claims,  
4 review client documents for filing complaint."). As plaintiff points out, the remaining  
5 1.55 hours of pre-filing work were spent on litigation planning and coordination  
6 activities, such as workload and representation arrangements, which would have been  
7 required even if plaintiff had never asserted its unsuccessful claims. All of these hours  
8 were reasonably expended on the litigation and are therefore compensable under the  
9 rationale of *Hensley*. *See Webb v. Board of Educ. Of Dyer County, Tenn.*, 471 U.S. 234,  
10 243 (1985); *see also ATL, Inc. v. City of Seattle*, No. C09-1240 RSL, 2012 WL 1949044,  
11 at \*2 (W.D. Wash. May 29, 2012) (pre-suit work is compensable where that work was  
12 "both useful and of a type ordinarily necessary to advance the . . . litigation").

13 Defendants also argue that the Court should exclude 7.5 hours of time Mr. Guyer  
14 expended preparing the declarations of Mr. Sheridan and Mr. Wolk. This argument  
15 misinterprets the relevant billing entry, which states "Draft declarations for Wolk and  
16 Sheridan, motion, consult with local attorneys re reasonable rates." Second Supplemental  
17 Ayers Decl., Ex. A-2, docket no. 164-1 at 13. The 7.5 hours listed in this time entry is  
18 the total sum of hours claimed by Mr. Guyer for researching and drafting the motion for  
19 attorney's fees, drafting the declarations of Mr. Sheridan and Mr. Wolk, and consulting  
20 with local attorneys regarding reasonable rates in the community. Taking into account all  
21 of the activities listed in the relevant billing entry, the number of hours claimed by Mr.  
22 Guyer are reasonable.

1           **C. Lodestar Calculation**

2           The lodestar amount for work performed by plaintiff's attorneys is \$116,502.50,  
 3 calculated by multiplying the hours awarded to each attorney by the reasonable hourly  
 4 rate determined above.

<b>Attorney</b>	<b>Hours Requested</b>	<b>Hours Awarded</b>	<b>Hourly Rate</b>	<b>Pre-Adjustment Lodestar</b>
Thad Guyer	85.6	85.6	\$550	\$47,080.00
Stephani Ayers	198.35	198.35	\$350	\$69,422.50
<b>TOTAL</b>				<b>\$116,502.50</b>

8           **D. Adjustment to Lodestar**

9           After the Court determines the lodestar amount, it must then consider whether an  
 10 upward or downward adjustment of the fee is warranted based on factors such as the  
 11 extent of the plaintiff's success in the litigation. *See Hensley*, 461 U.S. at 434. A  
 12 plaintiff is not eligible to receive attorney's fees for time spent on unsuccessful claims  
 13 unrelated to those on which the plaintiff prevailed. *See McCown*, 565 F.3d at 1103.  
 14 Claims are related where they "involve a common core of facts or [are] based on related  
 15 legal theories" and are unrelated if they are "distinctly different claims for relief that are  
 16 based on different facts and legal theories." *Hensley*, 461 U.S. at 434-35. Here, plaintiff  
 17 prevailed only on his claim for FLSA retaliation. Plaintiff's claims for FLSA retaliation  
 18 and for wrongful discharge in violation of public policy are clearly related because they  
 19 are based on related legal theories—that defendants terminated plaintiff due to his  
 20 engagement in protected activity—and "involve a common core of facts" concerning the  
 21 motivation for plaintiff's discharge. The remainder of plaintiff's claims, however, are  
 22 unrelated to the FLSA retaliation claim on which he prevailed.

1       In addition to plaintiff's claims for FLSA retaliation and wrongful discharge in  
 2 violation of public policy, plaintiff alleged claims for unpaid overtime wages under the  
 3 MWA and FLSA, breach of contract related to defendants' failure to provide certain  
 4 revenue based salary increases, tortious interference with contract and business  
 5 expectancies which arose after plaintiff's termination, and defamation. Each of these  
 6 claims is premised on facts and legal theories unrelated to the motivation for plaintiff's  
 7 discharge and are intended to remedy a course of conduct that is entirely distinct from the  
 8 conduct which gave rise to defendants' liability for FLSA retaliation.<sup>4</sup> These claims are  
 9 therefore unrelated to plaintiff's successful FLSA retaliation claim. *See Schwarz v.*  
 10 *Secretary of Health and Human Services*, 73 F.3d 895, 903 (9th Cir. 1995) (claims  
 11 "intended to remedy a course of conduct entirely distinct and separate from the course of  
 12 conduct that gave rise to the injury on which the relief granted is premised" are unrelated  
 13 under *Hensley*).

14       Once a district court concludes that a plaintiff has pursued unsuccessful claims  
 15 that are unrelated to the successful claim, its task is to exclude from the calculation of a  
 16 reasonable fee all hours spent litigating the unsuccessful claims. *Schwarz*, 73 F.3d at  
 17 904. In excluding such hours from the fee calculation, the district court "may attempt to  
 18 identify specific hours that should be eliminated, or it may simply reduce the award to  
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20       <sup>4</sup> Indeed, to prevail on his FLSA retaliation claim, plaintiff was not required to prove that he was entitled  
 21 to overtime wages that remained unpaid, that defendants breached plaintiff's employment contract by  
 22 failing to provide certain salary increases, that defendants intentionally interfered with plaintiff's  
 23 contractual relations or business expectancies for an improper purpose, or that defendants made certain  
 statements that were provably false; he only needed to show that he complained about not being paid  
 overtime wages (regardless of whether he was entitled to those wages and whether the wages were  
 unpaid) and that his complaints were a motivating factor in his termination.

1 account for the limited success.” *Id.* The district court necessarily has discretion in  
2 making this equitable judgment. *Id.* Because plaintiff’s counsel utilize block billing, it is  
3 difficult, if not impossible, for the Court to intelligibly identify and eliminate specific  
4 hours expended on the unsuccessful, unrelated claims. Thus, to appropriately account for  
5 plaintiff’s limited success, the Court will apply a percentage reduction to the fees  
6 claimed.

7 Applying such reduction to the total fees incurred, however, would be  
8 inappropriate given that all but one of plaintiff’s unsuccessful, unrelated claims were  
9 voluntarily dismissed on the first day of trial. The hours claimed by plaintiff’s counsel  
10 after the Court granted plaintiff’s motion for voluntary dismissal were expended  
11 exclusively in relation to plaintiff’s claims for FLSA retaliation and wrongful discharge  
12 in violation of public policy, and thus are fully compensable. Accordingly, the Court will  
13 reduce the fees generated by plaintiff’s attorneys prior to October 31, 2016—the first day  
14 of trial—by 40% to reflect plaintiff’s limited success.<sup>5</sup>

15 Mr. Guyer billed 19.85 hours prior to trial, totaling \$10,917.50 in fees at a rate of  
16 \$550 an hour. Ms. Ayers billed 140.8 hours prior to trial, totaling \$49,280.00 in fees at a  
17 rate of \$350. Applying the 40% reduction to plaintiff’s pretrial fees, the fee award for  
18 Mr. Guyer is reduced by \$4,367.00 and the award for Ms. Ayers is reduced by  
19 \$19,712.00, resulting in a total fee award of \$92,423.50:

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<sup>5</sup> Though plaintiff’s unsuccessful claims represent more than 40% of the total claims alleged, the Court  
23 finds that a greater reduction of pretrial fees would be inappropriate. A 40% reduction adequately  
accounts for the limited success plaintiff achieved.

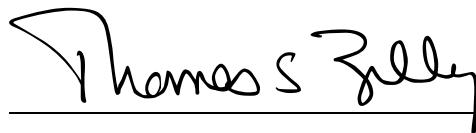
1 <b>Attorney</b>	2 <b>Hours Awarded</b>	3 <b>Hourly Rate</b>	4 <b>Pre- Adjustment Lodestar</b>	5 <b>Lodestar Adjustment</b>	6 <b>Total Fees Awarded</b>
7 Thad Guyer	8 85.6	9 \$550	10 \$47,080.00	11 (\$4,367.00)	12 \$42,713.00
13 Stephani Ayers	14 198.35	15 \$350	16 \$69,422.50	17 (\$19,712.00)	18 \$49,710.50
19 <b>TOTAL</b>	20	21	22	23	24 <b>\$92,423.50</b>

6  
**Conclusion**

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For the foregoing reasons, plaintiff's motion for attorney's fees, docket no. 147, is  
8 GRANTED in part and DENIED in part. The Court awards plaintiff reasonable  
9 attorney's fees in the amount of \$92,423.50.

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11 IT IS SO ORDERED.

12 Dated this 8th day of February, 2017.

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16 Thomas S. Zilly  
United States District Judge